



Department of Defense DIRECTIVE

AD-A272 225

December 27, 1988
NUMBER 5525.9



GC, DoD

SUBJECT: Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders

References: (a) Public Law 100-456, "National Defense Authorization Act, Fiscal Year 1989," September 29, 1988
(b) Title 10, United States Code, Section 814

A. PURPOSE

This Directive:

1. Implements Section 721 of reference (a).
2. Establishes policy and procedures for the return to the United States of, or other action affecting, DoD members and employees serving outside the United States, and family members accompanying them.
3. Prescribes procedures for treating such individuals who have been charged with, or convicted of, a felony in a court, have been held in contempt of a court for failure to obey the court's order, or have been ordered to show cause by a court why they should not be held in contempt for failing to obey the court's order.

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS), the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), the Uniformed Services University of the Health Sciences (USUHS), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

C. DEFINITIONS

1. Court. Any judicial body in the United States with jurisdiction to impose criminal sanctions on a DoD member, employee, or family member.
2. DoD Employee. A civilian employed by a DoD Component, including an individual paid from nonappropriated funds, who is a citizen or national of the United States.
3. DoD Member. An individual who is a member of the Armed Forces on active duty and is under the jurisdiction of the Secretary of a Military Department, regardless whether that individual is assigned to duty outside that Military Department.

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4. Felony. A criminal offense that is punishable by incarceration for more than 1 year, regardless of the sentence that is imposed for commission of that offense.

5. United States. The 50 States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

D. POLICY

It is DoD policy that:

1. With due regard for mission requirements, the provisions of applicable international agreements, and ongoing DoD investigations and courts-martial, the Department of Defense shall cooperate with courts and State and local officials in enforcing court orders relating to DoD members and employees stationed outside the United States, as well as their family members who accompany them, who have been charged with, or convicted of, a felony in a court, have been held in contempt by a court for failure to obey the court's order, or have been ordered to show cause why they should not be held in contempt for failing to obey the court's order.

2. This Directive does not affect the authority of DoD Components to cooperate with courts and State and local officials in enforcing orders against DoD members and employees outside the United States on matters not listed in subsection D.1., above.

3. This Directive does not create any rights or remedies and may not be relied on by any person, organization, or other entity to allege a denial of such rights or remedies.

E. RESPONSIBILITIES

1. The General Counsel of the Department of Defense (GC, DoD) shall:

a. Issue Instructions and other guidance, as necessary, to implement this Directive.

b. Review and approve the implementing documents issued by DoD Components under this Directive.

c. Coordinate on requests for exception to the requirements of this Directive under subsection E.2., below.

2. The Assistant Secretary of Defense (Force Management and Personnel (ASD(FM&P))), with the concurrence of the GC, DoD, shall grant exceptions on a case-by-case basis to the requirements of section F., below. In exercising this authority, the ASD(FM&P), on request by the DoD Component concerned, shall give due consideration to the pertinent mission requirements, readiness, discipline, and ongoing DoD investigations and courts-martial.

3. The Heads of DoD Components shall:

a. Comply with this Directive.

b. Issue Regulations implementing this Directive.

c. Report promptly to the ASD(FM&P) and GC, DoD, any action taken under paragraphs F.1.a. or F.1.b., below.

F. PROCEDURES

1. On receipt of a request for assistance from a court, or a Federal, State, or local official concerning a court order described in subsection D.1., above, the Head of the DoD Component concerned, or designee, shall determine whether the request is based on an order issued by a court of competent jurisdiction. Attempts shall be made to resolve the matter to the satisfaction of the court without the return of, or other action affecting, the member, employee, or family member (subject). Before action is taken under this section, the subject shall be afforded the opportunity to provide evidence of legal efforts to resist the court order, or otherwise show legitimate cause for noncompliance. If the Head of the DoD Component concerned determines that such efforts warrant a delay in taking action under this section, the DoD Component Head may grant a brief delay (not more than 45 days). All delays promptly shall be reported to the ASD(FM&P) and to the GC, DoD.

a. If the request pertains to a felony or to contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, and the matter cannot be resolved with the court without the return of the subject to the United States, the Head of the DoD Component, or designee, promptly shall take the action prescribed in subsections F.2. through F.4., below, unless the ASD(FM&P), or designee, grants an exception.

b. If the request does not pertain to a felony or contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or another person awarded custody by court order, and if the matter cannot be resolved with the court without the return of the subject to the United States, the Head of the DoD Component, or designee, promptly shall take the action prescribed in subsections F.2. through F.4., below, when deemed appropriate with the facts and circumstances of each particular case, following consultation with legal staff.

2. If a DoD member is the subject of the request, the member shall be ordered, under 10 U.S.C. 814 (reference (b)), to return expeditiously to an appropriate port of entry at Government expense, contingent on the party requesting return of the member providing for transportation, and escort, if desired, of the member from such port of entry to the jurisdiction of the party. The party requesting return of the member shall be notified at least 10 days before the member's return to the selected port of entry, absent unusual circumstances.

3. If a DoD employee is the subject of the request concerning the court order, the employee strongly shall be encouraged to comply with the court order. Failure to respond to the court order may be a basis for withdrawal of command sponsorship and may be the basis for adverse action against the DoD employee, to include removal from the Federal Service. Proposals to take such adverse action must be approved by the Head of the DoD Component concerned,

or designee. Such proposals shall be coordinated with the cognizant civilian personnel office and legal counsel.

4. If the family member of a DoD member or employee is the subject of a request concerning the court order, the family member strongly shall be encouraged to comply with the court order. Failure to respond to the court order may be a basis for withdrawing the command sponsorship of the family member.

G. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward one copy of implementing documents to the General Counsel of the Department of Defense within 60 days.

William H. Taft IV
WILLIAM H. TAFT, IV
Deputy Secretary of Defense

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NUMBER	DATE	DISTRIBUTION
5525.9, Change 1	August 17, 1990	5000 series

ATTACHMENTS

None

INSTRUCTIONS FOR RECIPIENTS


The following pen change to DoD Directive 5525.9, "Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders," December 27, 1988, is authorized:

PEN CHANGES

Page 3, subsection F.1., line 12. Change "45" to "90"

EFFECTIVE DATE

The above change is effective immediately.


JAMES L. ELMER
Director
Correspondence and Directives

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT